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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EAST CAREER AND TECHNICAL
ACADEMY STUDENTS FOR LIFE,
FELIPE AVILA, an individual, and
JANELLE RIVERA, an individual,

Plaintiffs,

v.

CLARK COUNTY SCHOOL DISTRICT;
EAST CAREER AND TECHNICAL
ACADEMY; DR. JESUS JARA,
individually and in his capacity and
Superintendent of Clark County School
District; TRISH TAYLOR, Individually
and her capacity as Principal of East Career
and Technical Academy; KAREN
STELLUTO, individually and in her
capacity as Assistant Principal of East
Career and Technical Academy; and
VINCENT MEDINA, Individually and in
his capacity as Assistant Principal of East
Career and Technical Academy,

Defendants.

Case No. 2:22-cv-01647-RFB-BNW

MOTION FOR LEAVE TO AMEND
PLAINTIFFS' COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a), Plaintiffs East Career and Technical Academy (ECTA) Students for Life (SFLC), Felipe Avila, and Janelle Rivera respectfully request that the Court permit them to file a First Amended Complaint ("FAC"), attached to this motion as Exhibit 1. This Motion is made and based upon all papers, pleadings, and records on file herein, the attached Memorandum of Points and Authorities, and any oral argument allowed at a hearing on this matter.

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MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

This action concerns the unlawful speech restriction policies enforced by Defendants which have denied Plaintiffs the rights guaranteed to them by the United States Constitution, the Equal Access Act, and the Nevada Constitution. ECF No. 1 at 13-16. Defendants' speech restriction policies target Plaintiffs' pro-life speech due to its viewpoint and leave similar speech by other student groups untouched. *Id.* at 4-6.

Plaintiffs filed this suit at the beginning of the 2022-2023 academic year. *Id.* On November 22, 2022, Defendants moved to dismiss certain peripheral aspects of Plaintiffs' claims, including (1) dismissal of ECTA as a separate party, (2) dismissal of claims against individual defendants in their official capacities, (3) dismissal of a single defendant all together, (4) dismissal of prospective injunctive relief for Plaintiff Felipe Avila, (5) dismissal of Equal Access Act claims against individuals, and (6) dismissal of claims under the Nevada Constitution. ECF No. 10 at 3. Importantly, Defendants' Motion for Partial Dismissal did not challenge Plaintiffs' First Amendment and Equal Access Act claims against the Clark County School District (CCSD). *See generally id.* Moreover, subsequent to Plaintiffs' Response to their Motion to Dismiss, Defendants acknowledged that Plaintiffs' claims under the Nevada Constitution may proceed. ECF No. 19 at 2.

Further, Defendants' Motion to Dismiss has not been granted. And *even if* the Court grants Defendants' Motion for Partial Dismissal—and Plaintiffs maintain that it should not (*see* ECF No. 14)—Defendants would still be left to defend the discriminatory and illegal activities at the core of Plaintiffs' Complaint. *Id.* at 2. Plaintiffs' First Amendment, Equal Access Act, and Nevada Constitution claims remain pending before this Court.

The Parties conducted a settlement conference on March 14, 2023, and on May 3, 2023. ECF No. 32 and ECF No. 41. The Parties have exchanged offers and counteroffers but have not yet reached an agreement on the case, and a third settlement conference is set for May 23, 2023. Although Plaintiffs initiated this suit early in the school year, it is increasingly likely that no agreement will be in place prior to Plaintiff Janelle Rivera's anticipated graduation from ECTA

1 later this month. Given Defendants’ earlier challenge to Plaintiff Felipe Avila’s claim for
 2 prospective injunctive relief due to his graduation from ECTA, Plaintiffs anticipate that
 3 Defendants may again attempt to distract from, rather than defend, the merits of the unlawful and
 4 viewpoint-discriminatory restrictions CCSD staff enforced against Plaintiffs.

5 Plaintiffs therefore request leave to amend the complaint and add Plaintiff Michael
 6 Hermosillo as a Plaintiff under the liberal amendment standard of Federal Rule of Civil Procedure
 7 15(a)(2). Michael Hermosillo is a sophomore at ECTA. He is currently a member of the ECTA
 8 SFLC, and will serve as its president next academic year. As a member of the ECTA SFLC,
 9 Michael has suffered, and continues to suffer, from many of the same unlawful speech restrictions
 10 described in Plaintiffs’ Complaint. ECF No. 1. Michael’s claims share common operative facts
 11 with those already alleged in the Complaint. Moreover, Michael seeks the same relief requested
 12 by Plaintiffs in the Complaint. As a result, the amended complaint will not prejudice Defendants,
 13 who already had—but declined—the opportunity to explain how their actions were somehow
 14 lawful under the First Amendment, the Equal Access Act, and the Nevada Constitution.
 15 Accordingly, Plaintiffs respectfully seek leave to file a FAC.

16 **2. LEGAL STANDARD**

17 Rule 15 of the Federal Rules of Civil Procedure permits amendment to a complaint with
 18 leave of the Court. Fed. R. Civ. P. 15(a)(2). Further, the Court “should freely give leave when
 19 justice so requires.” *Id.* “Courts are to apply this policy with ‘extreme liberality.’” *Vinayagam v.*
 20 *US Dep’t of Lab.*, 2023 WL 2756429, at *2 (D. Nev. Mar. 31, 2023) (citing *Owens v. Kaiser Found.*
 21 *Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)).

22 The liberality of Rule 15(a) is designed to “facilitate decision on the merits, rather than on
 23 the pleadings or technicalities.” *Chudacoff v. U. Med. Ctr. of S. Nev.*, 649 F.3d 1143, 1152 (9th
 24 Cir. 2011) (quoting *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.1981)); *see also Underwood*
 25 *v. O’Reilly Auto Enterprises, LLC*, 342 F.R.D. 338, 342 (D. Nev. 2022) (noting the “strong public
 26 policy in favor of permitting amendment [under Rule 15(a)]”). Moreover, to further advance this
 27 strong public policy, courts should draw inferences “in favor of granting the motion.” *Griggs v.*
 28 *Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th Cir.1999).

1 Keeping with the “extreme liberality” application of Rule 15(a) amendments, courts should
2 only deny a motion to amend under Rule 15(a) when there is a showing of “bad faith, undue delay,
3 futility, or undue prejudice to the opposing party,” also known as “Foman factors.” *Vinayagam*,
4 2023 WL 2756429, at *2 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

5 **3. PLAINTIFFS’ MOTION SHOULD BE GRANTED**

6 Each of the Foman factors weigh in favor of Plaintiffs’ Motion for Leave to Amend. The
7 Court should freely grant leave to amend in order to facilitate a decision on the merits.

8 **a. BAD FAITH**

9
10 In the Ninth Circuit, “bad faith” has been construed as a plaintiff “merely [] seeking to
11 prolong the litigation by adding new but baseless legal theories.” *Diaz v. Sun-Maid Growers of*
12 *California*, 2019 WL 3530398, at *3 (E.D. Cal. Aug. 2, 2019) (citing *Griggs v. Pace Am. Grp.,*
13 *Inc.*, 170 F.3d 877, 881 (9th Cir. 1999)). However, Plaintiffs’ proposed FAC adds *no* new legal
14 theories, let alone a baseless one. Instead, Plaintiffs merely seek to add a Plaintiff whose interests
15 and harms are coextensive with those of the original Plaintiffs. This factor weighs in favor of
16 granting Plaintiffs’ motion.

17 **b. UNDUE DELAY**

18 In addition to considering whether a motion for leave to amend was “filed within the period
19 of time allotted by the district court in a Rule 16 scheduling order,” courts will also consider
20 “whether the moving party knew or should have known the facts and theories raised by the
21 amendment in the original pleading.” *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d
22 946, 953 (9th Cir.2006). Here, Plaintiffs’ motion for leave to amend is filed prior to the issuance
23 of any scheduling order. Further, Plaintiffs learned that Michael Hermosillo would take leadership
24 of ECTA SFLC for the 2023-2024 academic year on or about April 7, 2023. This motion comes
25 35 days later. Accordingly, this factor weighs in favor of granting Plaintiffs’ motion.

1 c. **FUTILITY**

2 “[A] proposed amendment is futile only if no set of facts can be proved under the
3 amendment to the pleadings that would constitute a valid and sufficient claim or defense.” *Sweeney*
4 *v. Ada Cnty.*, 119 F.3d 1385, 1393 (9th Cir. 1997).

5 Here, Plaintiffs propose an amendment allowing a similarly-harmed individual to assert
6 identical claims to those already advanced by the original Plaintiffs. As noted above, Defendants’
7 Motion for Partial Dismissal (ECF No. 10) and subsequent Reply (ECF No. 19) presented no
8 defenses in favor of dismissing Plaintiffs’ core claims under the First Amendment, Equal Access
9 Act, and Nevada Constitution. Because “a complaint should not be dismissed unless a plaintiff
10 could prove no set of facts in support of his claim that would entitle him to relief,” (*Parks Sch. of*
11 *Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995)), Plaintiffs should be granted leave to
12 file their FAC, which reiterates the same claims advanced in the original Complaint and untouched
13 by Defendants’ Motion for Partial Dismissal.

14 d. **UNDUE PREJUDICE**

15 An amended pleading may cause undue prejudice if it would greatly alter the nature of the
16 litigation or require additional discovery. *Morongo Band of Mission Indians v. Rose*, 893 F.2d
17 1074, 1079 (9th Cir. 1990). An undue prejudice may occur when a plaintiff’s amended complaint
18 advances different legal theories than the original complaint. *Jackson v. Bank of Hawaii*, 902 F.2d
19 1385, 1387 (9th Cir.1990). Conversely, leave to amend should be given where “operative facts
20 remain the same” in order to “facility a proper disposition on the merits.” *Hurn v. Ret. Fund Tr.*
21 *of Plumbing, Heating & Piping Indus. of S. California*, 648 F.2d 1252, 1254 (9th Cir. 1981).

22 Plaintiffs’ proposed FAC asserts the same legal theories as the original complaint. Further,
23 the Parties have not yet begun discovery. Defendants will face no undue prejudice from Plaintiffs
24 FAC.
25

26 **CONCLUSION**

27 Leave to amend should be freely granted under Rule 15(a) where, as here, such leave will
28 “facilitate [a] decision on the merits.” Further, none of the Foman factors weigh in favor of

1 denying leave to amend. Plaintiffs respectfully request the Court to grant leave to file their
2 proposed FAC.

3 DATED: May 12, 2023

THE O'MARA LAW FIRM, P.C.

4
5 /s/ David C. O'Mara

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

_____ Depositing in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, following ordinary business practices

_____ Personal Delivery

_____ Facsimile

_____ Federal Express or other overnight delivery

_____ Messenger Service

_____ Certified Mail with Return Receipt Requested

 X Electronically through the Court's ECF system

addressed as follows:

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*Attorneys for Defendants Clark County
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DATED: May 12, 2023

/s/ Bryan Snyder
BRYAN SNYDER

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